

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DUANE GRIMES**, on February 11, 2003 at 8:00 A.M., in Room 303 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Duane Grimes, Chairman (R)  
Sen. Dan McGee, Vice Chairman (R)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jeff Mangan (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 208, HB 209, 2/7/2003  
Executive Action: SB 285, SB 298, SB 311, SB 328, HB  
208, HB 209, SB 156, SB 329, HB 116

**EXECUTIVE ACTION ON SB 285**

**Motion:** SEN. WHEAT moved that SB 285 DO PASS.

**Substitute Motion:** SEN. WHEAT made a substitute motion that SB 285 BE AMENDED, SB28501.av1, **EXHIBIT**(jus30a01).

**Discussion:**

**SEN. MIKE WHEAT** explained during the hearing there was concern in regard to how the state would become involved, if there was an award. This clarifies the state does not have a right to intervene in the action, at any stage, in which punitive damages are or may be awarded. It also adds the effective date of July 1, 2003.

**CHAIRMAN DUANE GRIMES** summarized when punitive damages are awarded, they will be apportioned as described in the bill. He questioned how a state would intervene. **SEN. WHEAT** stated if punitive damages were awarded and the defendant filed a notice of appeal, the state may intervene to protect its interest in the punitive damage award. This could complicate the case. When the appeal is completed and an award is paid, the state has an interest in the award. Up to that point, the state should not be involved.

**Vote:** Motion carried 8-1 with GRIMES voting no.

**Motion:** SEN. WHEAT moved that SB 285 DO PASS AS AMENDED.

**Discussion:**

**SEN. DAN MCGEE** remarked his understanding of the bill was that the damages had already been fully awarded to the plaintiff and punitive damages were a punishment against the defendant. Should there be a punitive award, half should go to the plaintiff and half to the state. **SEN. WHEAT** affirmed and added attorneys fees and costs would have been deducted before the award was split.

**CHAIRMAN GRIMES** raised a concern in regard to the self-interest issue and also the issue of the jury removing a tool of the defense. **SEN. WHEAT** maintained if a case involves multiple defendants and one of the defendants has settled out of the case, the jury is unaware of this matter. The court deducts this amount from an award given, after the award has been decided. An amendment could be added to state the court shall not inform the jury in regard to who would be receiving the punitive damages. In regard to the self-interest issue, the defendant would always

argue strenuously against a punitive award. This bill would not have any impact on the defendant's ability to defend itself against the punitive award.

**CHAIRMAN GRIMES** was also concerned about encouraging litigation. This bill would place litigation in a different light. **SEN.**

**WHEAT** believed the plaintiff would be more inclined to bring a lawsuit if they were to receive the entire award rather than half of the award. The intent of the bill involves a fairness issue because it is an award that is designed to punish the defendant.

**SEN. GARY PERRY** claimed both the Montana Defense Trial Lawyers and the Montana Chamber of Commerce spoke against the bill. As a member of the business community, one of the worst fears is the black cloud of punitive damages in a frivolous lawsuit. Punitive damage awards are preventing many doctors in Montana from affording malpractice insurance.

**SEN. JEFF MANGAN** contended he also is a business owner. He agrees that this bill would not increase litigation, since half the award would go into the Crime Victim's Program.

**SEN. JERRY O'NEIL** proposed a conceptual amendment. He believed the plaintiff's costs of the suit should also be taken out of the state's portion of the award. In a case where compensatory damages were \$3,000 and the punitive damages were \$2,000, the charge was for road rage. An attorney will not carry a case for \$3,000. In a jury trial when punitive damages are being considered, the judge tells the jury to take note of the efforts of the plaintiff as well as the benefit to society. In another case the compensatory and punitive damages were each set at \$5,000. The jury may have been giving the plaintiff attorney's fees with the punitive damage award. Another case involved \$5,280 in compensatory damages and \$20,000 in punitive damages. This involved an appeal to the Montana Supreme Court. An attorney cannot be hired for \$5,280 for a case that would go through the appellate court. If the plaintiff is performing a duty to society by bringing a lawsuit, the plaintiff should not carry the full cost of the suit if the state will be sharing in the award.

**SEN. WHEAT** maintained several states have legislation similar to SB 285. The Utah statute provides punitive damage awards above \$20,000 would include a deduction. In regard to the lower damage awards, most of the cases are taken on a contingency fee basis. The attorney would only receive a percentage of the award. He did not have a problem with the conceptual amendment.

**CHAIRMAN GRIMES** contended that with the above concurrence, there may be some rationale on the part of the jury or the judge that takes into consideration the attorneys' cost for the plaintiff.

**SEN. WHEAT** disagreed. The jury would not be instructed to award attorneys fees or costs. That would be determined by the judge after an award has been taken.

**Substitute Motion:** **SEN. O'NEIL** made a substitute motion that **SB 285 BE AMENDED.**

**Discussion:**

**SEN. JERRY O'NEIL** explained his conceptual amendment would state the first \$20,000 of punitive damages shall go to the plaintiff and any amount over that would be split evenly.

**SEN. WHEAT** commented this amendment could be placed on page 2, line 28. Following the word "damages", the language "above \$20,000" could be inserted.

**Vote:** Motion failed 4-5 with **MANGAN, O'NEIL, PEASE, and WHEAT** voting aye.

*{Tape: 1; Side: B}*

**SEN. MCGEE** remarked there was another bill in this session which would limit punitive damage awards. If the award is \$300,000 and the contingency is one-third, this would mean the attorney would receive one-third, the state would receive \$100,000 and the plaintiff would receive \$100,000. If both bills passed, the top end punitive award would be limited to \$250,000. This would not change anything about SB 285. **SEN. WHEAT** agreed.

**SEN. WHEAT** claimed, according to his knowledge, there has never been a medical malpractice punitive damage award in the state. Medical malpractice insurance companies are nothing more than investment companies. Premium dollars are invested. If the investments go downhill, the premium dollars are increased. The medical malpractice premiums are not increased due to punitive damage awards. There are things that can be done to help the doctors in Montana but capping punitive damages in medical malpractice awards will not make any changes. When tort reform was passed related to medical malpractice and damage awards were capped, this had no impact on the premiums paid.

**CHAIRMAN GRIMES** strongly disagreed. Factually, there are four or five examples of punitive awards he used in the medical malpractice legislation. There haven't been any since that time.

**Vote:** Motion carried 5-4 with CURTISS, GRIMES, O'NEIL, and PERRY voting no.

**EXECUTIVE ACTION ON SB 298**

**Motion:** SEN. CURTISS moved that SB 298 DO PASS.

**Substitute Motion:** SEN. CURTISS moved that SB 298 BE AMENDED, SB029801.av1, EXHIBIT(jus30a02).

**Discussion:**

**CHAIRMAN GRIMES** recapped the proper place for a trial involving a permit or certificate will be in the county in which the permitted activity occurred or in any of the counties if the activity occurs in more than one county.

**SEN. PERRY** noted the Subcommittee members believed the amendment would clearly address the intentions of the sponsor.

**SEN. WHEAT** maintained the amendment is directed at challenges by environmental groups. It requires the lawsuit against an agency that issued a permit to defend the case in the county where the activity may occur. We are dealing with the state agency in most cases. In the environmental cases, a permit is issued in Helena. In one case a lawsuit was filed in the county where the mine was located. This legislation is being brought about because there are some people unhappy with rulings made in Lewis and Clark County. The current venue statutes are adequate. This legislation is geared toward trying to cut off lawsuits generally filed by environmental groups.

**CHAIRMAN GRIMES** noted that a challenge would be addressed by the Montana Supreme Court. This legislation states the proper venue for correctly balancing all the legal and practical implications of an action would be in the location closest to the people.

**SEN. MCGEE** noted holding a trial before a group of peers has been a fundamental component of American jurisprudence. If an action is pending in Libby or Ekalaka, a jury of peers would not be found in Helena. The local people, on both sides of the issue, are the proper jury pool to oversee an action brought against a state agency.

**SEN. PERRY** did not see anything in the bill that would be unfair to any party in the future, regardless of the circumstances.

**SEN. WHEAT** contended the cases involved would be very specialized cases. This would only involve the issuance or denial of a

permit or a certificate by a state agency. These are legal decisions made by judges, not juries. The agency made the decision and they are the ones being sued.

**Vote:** Motion carried 5-4 with CROMLEY, MANGAN, PEASE, and WHEAT voting no.

**Motion:** SEN. CURTISS moved that SB 298 DO PASS AS AMENDED.

**Substitute Motion:** SEN. O'NEIL made a substitute motion that SB 298 BE AMENDED.

**Discussion:**

SEN. O'NEIL explained he would amend line 13 by striking the words "or in Lewis and Clark County".

**Substitute Motion:** SEN. O'NEIL made a substitute motion that SB 298 BE AMENDED.

**Discussion:**

SEN. O'NEIL explained he would amend line 13 by striking the words "or in Lewis and Clark County" and insert the words, "or as defined in the contract".

Ms. Lane noted with this amendment Lewis and Clark County would no longer be a proper place of trial for any kinds of actions against the state unless it is provided in contractual matters by contract. All other kinds of action could be brought only in the county in which the claim arose or the plaintiff resides.

CHAIRMAN GRIMES believed this may involve a large fiscal note.

SEN. O'NEIL contended this was discussed in the hearing and his understanding was it would not make much difference.

SEN. PERRY maintained this was discussed in Subcommittee and Ms. Lane suggested the language remain and use the amendment which has been passed.

SEN. WHEAT contended the plaintiff would bring the action and the bill states the proper place of an action against the state is in the county in which the claim arose or in Lewis and Clark County. He did not know what the amendment would accomplish.

Ms. Lane noted she explained to the Subcommittee that if the amendment was adopted it was specific as to certain kinds of

cases and it was beyond what the sponsor was asking to change existing law to eliminate Lewis and Clark County as a venue in other cases.

**Vote:** Motion failed 2-7 with CROMLEY and O'NEIL voting aye.

**Vote:** Motion carried 5-4 with CROMLEY, MANGAN, PEASE, and WHEAT voting no.

*{Tape: 2; Side: A}*

**EXECUTIVE ACTION ON SB 311**

**Motion:** SEN. WHEAT moved that SB 311 DO PASS.

**Substitute Motion:** SEN. MCGEE made a substitute motion that SB 311 BE AMENDED, SB031101.av1, EXHIBIT(jus30a03).

**Discussion:**

SEN. MCGEE noted on line 21, the comma between the word "is" and "contrary" is incorrect. If the phrase is separated from the rest of the sentence, the language is meaningless.

**Vote:** Motion failed unanimously.

**Motion:** SEN. MANGAN moved that SB 311 DO PASS AS AMENDED.

**Discussion:**

**Substitute Motion:** SEN. WHEAT made a substitute motion that SB 311 BE AMENDED, SB031102.av1, EXHIBIT(jus30a04).

**Discussion:**

SEN. WHEAT explained it was not his intent to have the legislation apply to physicians or other health care providers. Subsection (5) states, "This section does not apply to: . . . (c) health care providers: . . ." Clinical trials are ongoing in the process of developing new drugs and new medical devices or procedures. Subsection (c)(ii) states, "providing care and treatment to patients in accordance with the applicable professional standards of care." This would include all treating physicians. The amendment makes it clear the bill does not apply to medical doctors whether they are treating patients or involved in clinical trials.

**CHAIRMAN GRIMES** raised a concern with (c)(ii) in regard to the medical malpractice tort reform in place. He questioned whether the standards of care could be litigated. **SEN. WHEAT** contended if a doctor was providing care which fell below the applicable standard of care, this would be a negligence claim. In most cases, there would not be confidential information related to the claim. This statute is designed to prevent information to be kept secret which may constitute a public hazard. This bill did not apply to doctors before the amendment was submitted. Under those circumstances, it would not create a loophole.

**CHAIRMAN GRIMES** remarked it would then be up to a judge to determine whether or not the standards of care were below par. **SEN. WHEAT** explained in a medical malpractice case, the jury would decide whether or not the doctor's care has fallen below that standard of care established by the professional community. This bill involves a public hazard. This would include a device, instrument, procedure, or a product. If a doctor is engaged in practice and has a negligence claim against him, it would not fit under this bill.

**Substitute Motion:** **SEN. O'NEIL** made a substitute motion that SB 311 BE AMENDED.

**Discussion:**

**SEN. O'NEIL** would delete (c) through the end of the page. This would remove all mention to health care providers. This would make blood letting confidential. It would also make different cancer treatments confidential. The public has a right to know that these treatments do or don't work.

**Ms. Lane** stated (c) was all that was being addressed in SB031102.avl.

**SEN. O'NEIL** withdrew his motion and opposed the amendment.

**SEN. WHEAT** summarized (c) makes it clear that when doctors are engaged in clinical trials or practicing in the communities, the bill would not be applicable.

**Vote:** Motion carried 8-1.

**Substitute Motion:** **SEN. WHEAT** made a substitute motion that SB 311 DO PASS AS AMENDED.



**Discussion:**

**SEN. MCGEE** questioned whether, if this bill had been available, information about Remington Firearms would have been available and Mr. Barber from Manhattan would have known about the situation and perhaps the accident may not have occurred. **SEN. WHEAT** maintained if the bill had been in place across the United States, that would be true. If the bill had been in place in Montana, he was not sure. In large product liability cases, accidents occur across the country. Each jurisdiction has different rules and procedures. If the bill had been in place nationally, the attorneys representing the manufacturing company would not have been able to hide the information.

**SEN. MCGEE** questioned whether the bill would have any real effect in regard to information, which would be confidential in another state, being revealed in Montana. **SEN. WHEAT** explained the bill would only apply in Montana.

**SEN. MANGAN** noted that in the hearing on SB 311, testimony was given claiming there was no epidemic of secrecy. He questioned how we would know if there is an epidemic of secrecy. This is a good bill and it is about time for a bill such as SB 311.

**CHAIRMAN GRIMES** disagreed. He believed the bill was unduly broad and could start us down a slippery slope having unintended consequences. Even the plaintiffs may want information kept confidential. There is no limit to the application. It will increase the potential for litigation and create a more unstable regulatory environment for businesses in Montana.

**SEN. WHEAT** maintained the definition of public hazard is not very broad. All this states is that if in the realm of litigation, there is a public hazard identified through the litigation, this cannot be hidden. If a toy was small enough for a child to swallow and the child suffocated and died, the company that sold the same toy and had knowledge of its danger may only settle under the condition that this information be kept confidential. This issue is the intent of the bill. The public's right to know is not a slippery slope.

**CHAIRMAN GRIMES** noted that when people became aware of a public hazard, the fact that it was disclosed could cause opportunists to develop the set of circumstances that would allow them to join the litigation. If he were to start a manufacturing business in Montana and it had an effect on people, he would worry about this legislation being used by unscrupulous people.

**SEN. WHEAT** contended when a manufacturer received information that their product had the unintended consequence of hurting people, an ethical manufacturer would change the design. There are unscrupulous people who make economic decisions about changing the design. The bill would address those situations. When a public hazard is identified, the person who is responsible for the public hazard would not be allowed to hide it.

**CHAIRMAN GRIMES** maintained during testing phases, a pharmaceutical company might declare a drug quite applicable and helpful even though there may be some side effects.

**SEN. PERRY** recalled a statement Mr. Barber made at the hearing regarding punitive damage awards for product liability. He stated if they were capped, the number of lawsuits might drop. He was a proponent of the bill, but he did make the comment that capping punitive damages may have more effect than the bill.

**SEN. WHEAT** commented that would be a matter for a different bill. Senate Bill 311 is about the public's right to know. If forces unscrupulous people who are producing a device they knew had hurt people to be put on notice, if a public hazard happens in Montana it will be disclosed.

**SEN. MCGEE** questioned whether the instrumentality used in an abortion fit the definition of harm in SB 311. **SEN. WHEAT** noted it would not be the instrument that would be causing the harm, it would be the person using the instrument. This bill does not apply to a person.

**SEN. CURTISS** raised a concern about the necessity for the bill. If there was a prevailing epidemic, we would have a compelling reason to pass the bill.

**SEN. PERRY** remarked with a cap on punitive damages he could support the bill.

**{Tape: 2; Side: B}**

**SEN. WHEAT** believed in the good work of juries. If a company had a net worth of \$5 billion and did something which the jury believes they should be punished for, a cap of punitive damages of \$250,000 for a this company would have no effect. It is important that the jury have the ability to punish these large companies. This bill sends a message to people who would do business in this state that we honor our constitutional right to know and do not believe in secrecy. It would set a policy decision on behalf of the state that people will recognize.

**Vote:** Motion carried 5-4 with CURTISS, GRIMES, MCGEE, and PERRY voting no.

**EXECUTIVE ACTION ON SB 328**

**Motion:** SEN. MANGAN moved that SB 328 DO PASS.

**Substitute Motion:** SEN. MANGAN made a substitute motion that SB 328 BE AMENDED, SB032801.avl **EXHIBIT**(jus30a05).

**Discussion:**

**Ms. Lane** explained that she had been asked to provide for a lower level than fingerprint checks. She contacted **Becky Siebenaler, Child Care Unit at the Department of Public Health and Human Services**, and she suggested using a "name-based" check.

**Vote:** Motion failed unanimously.

**Substitute Motion:** SEN. MANGAN made a substitute motion that SB 328 DO PASS AS AMENDED.

**Discussion:**

**SEN. O'NEIL** remarked the people running the drop-in day care centers decided the red tape involved in licensing is more costly than it is worth. The day care centers are used quite extensively and no one is being hurt. We have a solution looking for a problem. Driving up the costs of drop-in day care will hurt single mothers by making fewer day care options available and also making these day care centers charge higher costs.

**SEN. WHEAT** disagreed that we should wait until something happens before we act. There are child predators who look for opportunities to be around small children. Anything we can do to prevent that from occurring, needs to be done. He is concerned that the DPHHS does not have the manpower or funds to enforce these statutes.

**SEN. MANGAN** summarized that currently there is no provision for mandatory licensure for drop-in child care. Drop-in child care has exploded in this state. This is one small step to get a handle on the employees who are working with our children. One reason we may not have heard about problems is because there is no reporting requirement to the state or investigation by the state. If this bill pushes one facility to decide this is a good practice for their business and that action screens out one person, it will be worth it.

**Vote:** Motion carried 7-2 with MCGEE and O'NEIL voting no.

**HEARING ON HB 208**

**Sponsor:** REP. JIM SHOCKLEY, HD 61, VICTOR

**Proponents:** None

**Opponents:** None

**Opening Statement by Sponsor:**

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 208. He explained the only change made was on page 2, line 19. The words "within a reasonable time" were added. The Montana Supreme Court concurring opinion held it would be a good idea if the two medical doctors or clinical psychologist submitted testimony that the parent cannot assume the role of parent within a reasonable time. The statutes ought to reflect the law.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

SEN. WHEAT questioned why a specific time had not been set out.

REP. SHOCKLEY preferred allowing the courts as much latitude as possible. The court knows what is reasonable and that would be the better way to address the issue.

**Closing by Sponsor:**

REP. SHOCKLEY closed on HB 208.

**EXECUTIVE ACTION ON HB 208**

**Motion/Vote:** SEN. MCGEE moved that HB 208 BE CONCURRED IN.  
Motion carried unanimously.

**HEARING ON HB 209**

**Sponsor:** REP. JIM SHOCKLEY, HD 61, VICTOR

**Proponents:** None

**Opponents:** None

**Opening Statement by Sponsor:**

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 209. He noted last session REP. JENT attempted to make the lien laws and the times involved in the lien laws consistent. One such situation was inadvertently left out. This bill deals with the situation where there is a judgment lien in county "A" and the intent is to move it to county "B". This would involve a ten year time frame instead of six years. The time starts running from the date of the original entry of judgment. This will make the liens consistent in as many situations as possible.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

None

**Closing by Sponsor:**

REP. SHOCKLEY closed on HB 209.

**EXECUTIVE ACTION ON HB 209**

**Motion:** SEN. MCGEE moved that HB 209 BE CONCURRED IN AS AMENDED.

**Discussion:**

Ms. Lane noted (2) was an exception to (1) but they now would have a ten year time frame. She questioned whether this should be stated in two different subsections.

***{Tape: 3; Side: A}***

REP. SHOCKLEY maintained there would be two situations. This would be ten years from the termination of the support obligation or ten years from the entry of a lump sum judgment or order for support, whichever is later. This would make a distinction between the two.

**Vote:** Motion failed unanimously.

**EXECUTIVE ACTION ON SB 156**

**Motion:** SEN. O'NEIL moved that SB 156 DO PASS.

**Discussion:**

**SEN. O'NEIL** provided a handout, **EXHIBIT(jus30a06)**, which shows the average graduate of an American Bar Association (ABA) accredited law school has a debt load of approximately \$84,000. This makes it virtually impossible for them to represent low income clients. Senate Bill 156 would be helpful to the low income people in Montana. A single mother would be more likely to be able to have the representation of an attorney when that was needed. This protects children, single mothers, and families. This bill will not diminish the quality of attorneys in Montana because they will still be under the control of the Montana Supreme Court, they will still need to take the Montana bar examination, and they will still be subject to investigation in regard to ethics and character. Also, they will still be licensed. All the checks and balances will be in place with the exception of the Montana Supreme Court stating that attorneys need to be a graduate of an ABA accredited law school. Someone like Matt Himself, who was a senator for 20 years and taught American government, would be able to take the bar exam.

**SEN. CROMLEY** noted there could be some argument with the holding that to be an applicant for the bar exam, the person would need to have attended an ABA accredited law school. He did not believe placing an amendment on the Constitution would be a good way to address that situation. He also was concerned about the language in the bill stating there could be no discrimination on the basis of formal education. Would this mean that one would need any education at all to be able to practice law?

**Motion:** **SEN. CROMLEY** moved that SB 156 BE INDEFINITELY POSTPONED.

**Discussion:**

**SEN. O'NEIL** maintained there were many ways to obtain knowledge besides formal education. In the Montana Supreme Court case, **Dana Culver** was discriminated against because she attended a law school that was accredited by the California Bar Association and the Western States Association of Schools of Colleges rather than by the ABA. Allowing the ABA to be the sole gatekeeper of who can practice law in Montana is a violation of the anti-trust act. There needs to be some compelling reason to discriminate on that basis and there is no compelling interest to allow someone to take the bar exam that is a graduate of an ABA accredited law school while not allowing someone who is a graduate of a law school accredited by the Western States Association of Schools and Colleges. The continuing legal education courses would be informal education since tests are not given. Credits are

provided for showing up. Gene Hedman is an attorney in Whitefish who does not have a degree from a licensed law school. His education was obtained from the LaSalle Extension University and the Montana State University. When he took the bar examination forty people took the exam and he was one of the seven persons who passed. He is a very well respected attorney in the Flathead Valley. To prohibit someone like him from practicing law is a disservice to the public in Montana.

**SEN. CURTISS** noted one of the handouts from the hearing on SB 156 stated, "Our justice system is the cornerstone of a free society. Yet justice will never be available to the great majority of Americans who are among the middle class and poor because they cannot afford legal services and due to substantial cuts in government funding, those legal services which used to be provided by the government for the poor are a token of what is required. Any solution to this critical problem has to include a radical reconsideration of traditional legal education in this country. It has to consider who has access to that education, what skills are essential to the education, how long it takes to complete the education, and what the necessary cost of that education will be. None of that is possible based on the arbitrary straight jacket in which the American Bar Association, a mere professional trade organization, has placed legal education. By its order today, this Court placates the legal establishment, including the ABA and this country's traditional law faculty, but simply postpones the ultimate day of reckoning which any thoughtful society will ultimately demand." Justice Terry N. Trieweiler dissent in the Dana Culver case, **EXHIBIT(jus30a07)**.

**Vote:** Motion failed 4-5 on roll call vote.

**Motion/Vote:** SEN. GRIMES moved that SB 156 BE INDEFINITELY POSTPONED. Motion carried 5-4 on roll call vote.

**SEN. CROMLEY** referred to line 22, page 1, of the bill and specifically noted the language pertaining to the right to practice law would not be denied because of any quota. He noted the University of Montana Law School in their class acceptance has a quota system allocating two-thirds of the students accepted to be in-state residents. This bills has many ramifications which cause him concern.

#### **EXECUTIVE ACTION ON SB 329**

**Motion:** SEN. MANGAN moved that SB 329 DO PASS.

**Substitute Motion:** SEN. MANGAN made a substitute motion that SB 329 BE AMENDED, SB032901.av1, **EXHIBIT(jus30a08)**.

**Discussion:**

SEN. MANGAN explained on page two of the bill, the six-month period would be extended to a year for employees to get to the training at either the Montana Law Enforcement Academy (MLEA) or the facility. Given the fiscal issues, courses may not be offered as regularly as they used to be at the MLEA. The juvenile detention office was also added to the section of the law.

SEN. MCGEE noted this would not only change the training time frames for the juvenile and detention officers but also for probation officers, parole officers, correction officers, and commercial vehicle inspectors. SEN. MANGAN stated it was his understanding due to the state's fiscal situation, it is very difficult for the classes to be on a six-month cycle. This came from the Board of Crime Control. If there is an issue, he would change this back to six months in the House.

**Vote:** Motion carried unanimously.

**Motion/Vote:** SEN. MANGAN moved that SB 329 DO PASS AS AMENDED. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 116**

**Motion:** SEN. MANGAN moved that HB 116 BE CONCURRED IN.

*{Tape: 3; Side: B}*

**Motion:** SEN. CROMLEY moved that HB 116 BE AMENDED.

**Discussion:**

SEN. CROMLEY provided a proposed amendment, **EXHIBIT(jus30a09)**. He tried to categorize the long list of persons for the members of the commission. The amendment would replace all of (3). He noted the number of members should not exceed eighteen.

CHAIRMAN GRIMES summarized the amendment would allow the Attorney General to mix and match the members.

SEN. WHEAT asked whether mental health providers should be added to (c).



**SEN. CROMLEY** noted a member from the legislature was not included. This might be considered.

**SEN. MANGAN** wanted to ensure there would be a mental health and a legislative representative on the committee. The bill uses the language "amongst the following". This would allow the Attorney General to chose members amongst those areas.

**SEN. CROMLEY** did not have a problem adding the language.

**Substitute Motion:** **SEN. MANGAN made a substitute motion that HB 116 BE AMENDED.**

**Discussion:**

**SEN. MANGAN** requested the language in HB011601.avl, **EXHIBIT(jus30a10)**, be included in **SEN. CROMLEY's** amendment.

**SEN. WHEAT** noted the statutes use the term "health care providers" which is a broader term than "medical providers". This could state health care providers, including but not limited to, physicians, psychiatrists, psychologists, and mental health counselors.

**Ms. Lane** suggested using the language "medical and mental health care providers".

**SEN. MCGEE** noted the one party missing is an offender. To find out why these things happen, it seems appropriate to ask the people who perpetrate, whether male or female. This is a fatal flaw with the concept.

**CHAIRMAN GRIMES** questioned whether the appropriate situation would be to make an offender a full-fledged member of the task force. It might be better to add language stating the commission shall explore the reasons for and the motives of perpetrators by contacting as many reformed perpetrators as possible. This would show the legislature's intent to get to the root cause of the problems for the individuals.

**SEN. WHEAT** noted that during the hearing he asked why a mental health counselor was not included. It is important to have someone who studies the mental health conditions to bring that perspective to the body.

**SEN. MCGEE** claimed experts could not testify in as vivid a fashion as an offender.

**SEN. O'NEIL** believed the committee would be one-sided. He would like to see representation from a father's right group.

**SEN. CURTISS** stated the only reason for the bill would be the legislature's input on the makeup of the committee.

**Vote: Motion carried unanimously.**

**Motion:** **SEN. MANGAN** moved that HB 116 BE CONCURRED IN AS AMENDED.

**Discussion:**

**CHAIRMAN GRIMES** stated the reason for the bill is because access is needed for otherwise confidential information and also they need to be able to exclude the press so this does not become a public hearing due to the confidentiality of some of the issues to be discussed in order to address the root of the problem. It will be necessary to explore sensitive issues. He supported the bill.

**SEN. MANGAN** remarked this was a permissive measure. The community of interest would ask for the commission to review a specific case that happened in the past. This will assist local law enforcement on some root causes or concerns so they can move forward with more knowledge and education. If this helps to save one life, it is well worth the effort.

**SEN. O'NEIL** stated the case they were given was of a husband who killed his wife because she was sleeping with another man. This is an age old problem. Montana law forbids these people from addressing the issue in court. We specifically state marital misconduct may not be considered in a divorce. The members of the commission will not address that issue.

**SEN. MCGEE** asked why is there domestic violence? Why is there a fatality in domestic violence? An 18-person commission will come back with more legislation to deal with the basic concept. When two people get married they swear fidelity to each other and then they violate it. A man fails to love his wife or a woman fails to honor her husband. When times get rough, they choose not to work through it. Drugs and alcohol exacerbate the situation.

**{Tape: 4; Side: A}**

**CHAIRMAN GRIMES** maintained homes are becoming more violent. Domestic abuse and child abuse is increasing. We can't sit back and do nothing. He does not want another perpetrator to get by with something that could have been prevented.

**SEN. MCGEE** claimed the Attorney General already had access to the information. **CHAIRMAN GRIMES** claimed the Attorney General would not be able to keep the meetings confidential and private. Also, there is information or records needed that the Attorney General could not otherwise request.

**SEN. CURTISS** stated that it looks as if the commission would be investigating fatalities and cases that have been adjudicated and have received a final judgment. She understood their purpose and goal is to prevent these occurrences. Society is concerned about domestic violence. The language on lines 17 and 18 of page 2 will permit those people to be very intrusive and have the backup and authority of the Attorney General's Office. They will decide who may possess the information and go after them. Will these people be held in contempt of court if they did not want to cooperate.

**CHAIRMAN GRIMES** claimed the question was asked in the hearing and there would be no recourse if people refused. This bill gives the power to request confidential information but no authority to take action if it is not provided. A community could invite someone in to review a heinous situation which has been resolved. If the parties did not give them the requested information, they would be limited in that respect.

**SEN. CURTISS** was concerned that when the commission approached individuals under the auspices of the Attorney General's Office, people may be intimidated.

**SEN. PERRY** commented eighteen members would be too large a commission. If anything will be accomplished, they would have a better chance of doing so with half the membership. Nothing has been established as far as when and where the commission would meet. There was an event of domestic violence in his community, the murder of **Lee Ann Miller**, in which the community had no explanation of what happened.

**SEN. O'NEIL** noted the meetings and the records of the meetings would be secret and exempt. The only two reasons for the commission would be: 1) help draft legislation in the future, and 2) to inform the public. The Attorney General's Office can draft legislation based on information he has. The public will not be informed by secret meetings.

**SEN. WHEAT** remarked the size of the board should be eighteen members to encompass the number of people focused on domestic abuse. They would meet only when requested to conduct an investigation and that would only occur after a fatality had occurred and the case is terminated. In regard to informing the

public, his understanding is the commission would try to draw some conclusions as to why the events took place. The conclusions would be submitted to the public. In the process of the investigation, many things may need to be kept confidential. This is a good faith effort on the part of our society to try to understand what motivates people to do what they do in the arena of domestic abuse when one spouse kills another spouse. This legislature is concerned about what goes on in the family structures across our state.

**CHAIRMAN GRIMES** remarked a very good book on the subject is, Dance with Anger. It discusses what happens to cause females to stay in a relationship that is terribly abusive. There are a lot of things leading up to domestic abuse. He has always wondered what causes those people to be so subordinate to stay in relationships where they are continually battered. A very confidential hearing would be needed for the friends or relatives to focus on the reasons involved.

**Vote: Motion carried 6-3 on roll call vote.**

**ADJOURNMENT**

Adjournment: 11:00 A.M.

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SEN. DUANE GRIMES, Chairman

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JUDY KEINTZ, Secretary

DG/JK

**EXHIBIT** (jus30aad)